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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 PATRICK J. IVES,

7 Petitioner,

8 v.

9 SUQUAMISH TRIBE,

10 Respondent.

CASE NO. C19-5773 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

11 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable David W. Christel, United States Magistrate Judge. Dkt. 6.

12 On July 15, 2019, Petitioner filed this federal habeas action. Dkt. 1. Judge Christel
13 ordered Petitioner to show cause why the petition should not be dismissed by November
14 15, 2019. Dkt. 5. Petitioner did not respond to the show cause order. On November 27,
15 2019, Judge Christel issued the R&R recommending dismissal of the petition without
16 prejudice. Dkt. 6.

17 On December 26, 2019, the R&R addressed to Petitioner was returned to the court
18 with the annotation “Return to Sender- Not in Jail.” Dkt. 7.

19 Petitioner failed to respond to the show cause order by the required deadline.
20 Thus, the Court agrees with the R&R that the petition should be dismissed without
21 prejudice for failure to prosecute.
22

1 Moreover, the local rule concerning involuntary dismissal, which allows the Court
2 to dismiss an action 60 days after mail directed to a pro se plaintiff is returned, is not
3 implicated in this case. *See* Local Rules W.D. Wash. LCR 41(b)(2). Although the R&R
4 was returned to the Court as undeliverable, the show cause order preceding the R&R was
5 mailed to Petitioner at his jail address without incident. Petitioner's failure to respond to
6 the show cause order by the deadline set by the magistrate judge is adequate cause for
7 this Court to dismiss his case without prejudice at this time.

8 Therefore, the Court having considered the R&R and the remaining record, does
9 hereby find and order as follows:

- 10 (1) The R&R is **ADOPTED**;
- 11 (2) Petitioner's federal habeas petition is **DISMISSED without prejudice**;
- 12 (3) A Certificate of Appealability is **DENIED**; and
- 13 (4) The Clerk shall enter **JUDGMENT** and close this case.

14 Dated this 6th day of January, 2020.

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BENJAMIN H. SETTLE
United States District Judge